

REMARKS

Claims 1 and 8 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,917,603 B2. Applicants' attorney will file a terminal disclaimer at such time as is required.

5 Claims 1, 2, 6, 8, 9, 13, 15 and 16 stand rejected under 35 U.S.C. 102(e) as being anticipated by Mochizuki (US Pat. No. 6,628,633 B1). Claims 7 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki in view of Jarbot et al. (US Pat. No. 6,816,507 B1, "Jarbot"). Claims 21-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki in view of Hunsberger (US Pat. No. 6,167,282). Claims 3-5, 10-
10 12, and 17-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki in view of Rydbeck et al. (US Pat. No. 6,332,006 B1, "Rydbeck"). Applicants respectfully traverse these rejections with respect to independent claims 1-7, 8-14, 21, 22, and 23. Applicants herein amend claims 15, 22, and 24 in response to these rejections. Further, Applicants herein cancel Claim 16. Claim 18 is amended to correct a typographical error.

15 Claim 1 is directed to a method for operating a base station to wirelessly transmit data communications to a plurality of user terminals on a single wireless carrier. Among other things, claim 1 requires that a base station transmits a superframe to a plurality of user terminals, the superframe including a plurality of high speed data frame. Among other limitations, claim 1 requires that the high speed data frame carries at least one data communication and includes: (1) a respective indication of at least one user terminal for which the at least one data communication is intended; and (2) a respective indication of at least one data rate of the high speed data frame.

The Examiner cites Mochizuki as meeting all limitations of claim 1 under 35 U.S.C. 102(e). Mochizuki discloses a frame structure that allows a plurality of data terminals to share a

spectrum in a time divided fashion. Referring to FIG. 3 of Mochizuki and related text at col. 7, lines 28-35, Mochizuki discloses “a format for a forward packet” that includes “a destination terminal identifier.” Col. 7, line 56 through col. 8, line 5 of Mochizuki describes how the forward packet may be formed with one of three transmission rates: R1, R2, or R3. The forward 5 packet but does not include “a respective indication” of the transmission rate of the forward packet as is required by claim 1. Col. 8, lines 60-63 of Mochizuki, describes how “[e]ach mobile station despreads a spectrum of the forward signal using the forward spreading codes for the possible transmission rates R1, R2, and R3 to monitor the forward signal.” The mobile stations must use spreading codes for each possible transmission rate R1, R2, and R3 because the 10 forward packet does not include “a respective indication” of the transmission rate.

For this reason, Mochizuki fails to disclose, teach, or suggest all of the elements of claim 1. Thus, Mochizuki fails to anticipate independent claim 1 and dependent claims 2 and 6 (that depend from claim 1) unpatentable under 35 U.S.C. 102(e). Independent claim 8 includes limitations similar to those of claim 1. For this reason, Mochizuki does not anticipate 15 independent claim 8 or dependent claims 8 and 13 unpatentable under 35 U.S.C. 102(e). Amended independent claim 15 includes limitations similar to those of claim 1. For this reason, Mochizuki does not anticipate amended independent claim 15 or claim 16 (that depends from claim 15) under 35 U.S.C. 102(e).

Claims 3-5 and 7, claims 10-12 and 14, and claims 17-20 all depend directly or indirectly 20 from claims 1, 8, and 15, respectively. The Office Action cites Mochizuki as the primary reference and Jarbot as the secondary reference for the 35 U.S.C. 103(a) obviousness rejections of claims 3-5, 7, 10-12, 14, and 17-20. Because Mochizuki fails to provide primary support for the 35 U.S.C 103(a) rejections, as described above, the cited references in combination fail to meet all elements of claims 3-5, 7, 10-12, 14, and 17-20 and these claims are not rendered

obvious by the cited references.

Because Jarbot issued after the filing date of the present application, Jarbot could only qualify as prior art under 35 U.S.C. 102(e). Jarbot appears to be the national stage entry of an International Application filed prior to November 29, 2000 (PCT Filed June 30, 1999). Thus,

5 Jarbot is subject to the former (pre-AIPA) version of 35 U.S.C. 102(e). As stated in MPEP - 702.02(a) II, former 35 U.S.C. 102(e) states that person shall be entitled to a patent unless-

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1),

10 (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

As is further stated at MPEP - 702.02(a) II, International applications, which: (1) were filed prior to November 29, 2000, or (2) did not designate the U.S., or (3) were not published in English under PCT Article 21(2) by WIPO, may not be used to reach back (bridge) to an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. 102(e).

Jarbot is based upon PCT/DE99/01909, which was filed June 30, 1999.

The earliest possible date of priority for Jarbot is January 13, 2000, the date of publication of WO00/02401. Applicants do not admit that Jarbot is entitled to this date because the Patent Office has not cited such publication in the Office Action and its contents may differ from the issued US Utility Patent. Nonetheless, Applicants herewith submit 37 C.F.R. 1.131 Affidavits to evidence a completion of invention date no later than January 7, 2000. Because January 7, 2000 is earlier than the alleged publication date of Jarbot of January 13, 2000, Jarbot is not prior art to the present application in any case. For this additional reason, claims 3-5, 7,

10-12, 14, and 17-20 are not rendered obvious by the cited references over Mochizuki in view of Jarbot.

Claim 21, amended 22, claim 23, and amended claim 24 include limitations similar to claims 1, 8, and/or amended claim 15. The Office Action cites Mochizuki as the primary reference and Hunsberger as the secondary reference for the 35 U.S.C. 103(a) obviousness rejections of claims 21, 22, 23, and 24. Mochizuki fails to provide primary support for the 35 U.S.C 103(a) rejections, as described above. Hunsberger is cited for structural teachings and fails to meet the shortcomings of Mochizuki. Thus, the cited references in combination fail to meet all elements of claims 21, 22, 23, and 24 and render these claims obvious.

10 All claims are now allowable and a notice of allowance is courteously solicited. Please direct any questions or comments to the undersigned attorney.

Respectfully submitted,

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